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AUG 10 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

RICK D. RHODES  
(202) 728-0401 Ext. 113

August 10, 1995

ORIGINAL

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W. - Room 222  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: MM Docket No. 95-88  
RM-8641  
Comments and Counterproposal of  
JEE Broadcasting, Inc., L.P.

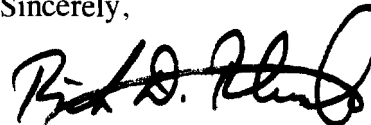
Dear Mr. Caton:

Transmitted herewith on behalf of JEE Broadcasting, Inc., L.P. are an original and four copies of its Comments and Counterproposal in the above captioned proceeding.

This item seeks the modification of the Commission's Table of FM Broadcast Allotments to specify allocation of Channel 284C3 to Ocracoke, N.C.

It is believed that this item is correct and in order for the Commission's consideration. Should any questions arise concerning this matter however, kindly contact the undersigned at the direct dial number referenced above.

Sincerely,



Rick D. Rhodes

Enclosures

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Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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AUG 10 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of	)	MM Docket No. 95-88
	)	
Amendment of Section 73.202(b),	)	RM-8641
Table of Allotments,	)	
FM Broadcast Stations	)	
(Rose Hill and Trenton, North Carolina)	)	

To: Chief, Allocations Branch

DOCKET FILE COPY ORIGINAL

**COMMENTS AND COUNTERPROPOSAL  
OF JEE BROADCASTING, INC., L.P.**

JEE Broadcasting, Inc., L.P. ("JEE"), by its attorney and pursuant to Section 1.420 of the Commission's rules, hereby submits its Comments and Counterproposal in response to the Commission's Notice Of Proposed Rulemaking ("Notice") in the above-captioned proceeding.<sup>1</sup> JEE requests that channel 284C3 be allocated to Ocracoke, North Carolina and that the Commission modify the Table of Allotments as follows:

<u>COMMUNITY</u>	<u>EXISTING</u>	<u>PROPOSED</u>
Rose Hill, NC	284A	284A
Ocracoke, NC	225A	225A, 284C3

In support of this counterproposal, the following information is provided.

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<sup>1</sup> FCC Release No. DA 95-1277 (adopted: June 8, 1995; released: June 19, 1995).

## **I. BACKGROUND AND STATEMENT OF INTEREST**

JEE is an entity which has been established for the purpose of operating radio broadcasting businesses in the Southeastern U.S. The general partner of JEE is presently engaged in the radio program consulting business. Should JEE's counterproposal be adopted by the Commission, JEE will file an application seeking authorization to serve Ocracoke, North Carolina on channel 284C3.

JEE is requesting the allotment of FM channel 284C3 to Ocracoke, North Carolina as that community's second local transmission service.<sup>2</sup> The attached engineering exhibit shows that channel 284C3 can be allocated to Ocracoke consistent with the Commission's separation criteria. JEE proposes allocation of the channel to Ocracoke, a community located on a barrier island in coastal North Carolina. Ocracoke is located in Hyde County. Ocracoke has its own library as well as primary and secondary educational facilities. A community-operated system provides water service to the community's residents and businesses. Ocracoke is not located in an urbanized area nor is it located in any statistical metropolitan area.

## **II. COMMENTS**

In the instant proceeding, Duplin County Broadcasters (DCB), licensee of FM Station WBSY at Rose Hill, North Carolina, has petitioned the Commission to reassign channel 284A from Rose Hill, North Carolina to Trenton, North Carolina and to upgrade the channel

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<sup>2</sup> JEE notes that while a Class A FM facility has been licensed to Ocracoke, that facility is not currently operating and JEE has been unable to determine when that station will commence broadcast operations.

classification from Class A to Class C2.<sup>3</sup> DCB's petition notes that a significant increase in the total number of persons served by the station would result from Commission approval of the proposal. Moreover, DCB notes that the reallocation of the channel from Rose Hill to Trenton would provide the latter community with its first local aural transmission service.<sup>4</sup> However, the attached technical exhibit demonstrates that the reallocation of the channel and the upgrade of the station as proposed by DCB would deprive approximately 24,000 residents of Duplin County of their only available full-time local radio service. Moreover, the proposed move to Trenton, North Carolina while providing that community with a first local service, would merely offer an additional FM signal to an area which is already served by in excess of five full-time radio broadcast facilities.

JEE's counterproposal will provide a new service to approximately 4,000 coastal area residents. The counterproposed operational area is largely underserved. More specifically, the attached exhibit demonstrates that the residents of Ocracoke are now served by fewer than five full-time radio broadcast signals. Indeed, the engineering report shows that the counterproposed facility may offer Ocracoke the second authorized full-time and first local service actually on the air. Moreover, the counterproposed facility would offer Ocracoke its first wide area coverage facility, which provision the Commission previously has noted is in the public interest.<sup>5</sup> This ability to serve the adjacent coastal waters with full service local news and weather information is particularly critical in light of the predominance of the coastal fishing and shipping industry

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<sup>3</sup> DCB's Petition for Rulemaking and Request for Modification of Station License at 1.

<sup>4</sup> Notice of Proposed Rulemaking at 1.

<sup>5</sup> In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Ocracoke, North Carolina), 8 FCC Rcd. 4943 (1993).

in the local economy as well as significant levels of recreational boating and water sport activity conducted in the area.

Based on the foregoing, JEE asserts that the public interest will be better served by allotment of channel 284C3 to Ocracoke, North Carolina, because this allocation would allow a significant number of coastal residents to obtain a second (indeed, possibly a first operational) local broadcast service in an underserved area. Moreover, JEE's counterproposed allocation plan offers the added benefit of maintaining service to the 24,000 residents in Duplin County who stand to lose their only local full-time service if the DCB proposal is adopted. Accordingly, JEE's proposal better serves the Commission's service allocation criteria with respect to discontinuance of current service and also promotes a full-time local service to an underserved area.<sup>6</sup>

### **III. CONCLUSION**

JEE asserts that the public interest will best be served by the Commission's adoption of this counterproposal. The residents of Duplin County would continue to enjoy full-time local service and an underserved area would receive a second local service. In the event that the Commission adopts this counterproposal, JEE intends to promptly prepare and file the necessary application for an authorization to operate on channel 284C3 at Ocracoke, North Carolina.

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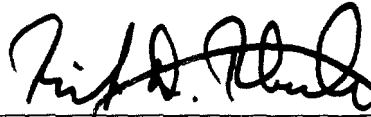
<sup>6</sup> Revision of FM Assignments, Policies and Procedures, 90 FCC 2d 88(1982); see also: Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 5 FCC 2d 7094 (1990).

**WHEREFORE, THE PREMISES CONSIDERED,** JEE respectfully requests that the Commission amend its FM Table of Allotments as proposed herein.

Respectfully submitted,

**JEE BROADCASTING, INC., L.P.**

BY:

A handwritten signature in black ink, appearing to read "Rick D. Rhodes", written over a horizontal line.

Rick D. Rhodes

Irwin, Campbell & Tannenwald, P.C.  
1320 - 18th Street, N.W., Suite 400  
Washington, DC 20036  
Its Attorney

August 10, 1995

**ENGINEERING EXHIBIT**

ENGINEERING EXHIBIT IN SUPPORT OF  
COUNTERPROPOSAL IN RM-8146  
J.E.E. BROADCASTING  
OCRACOE, NORTH CAROLINA

August 10, 1995



ENGINEERING EXHIBIT  
IN SUPPORT OF COUNTERPROPOSAL TO  
PETITION FOR RULEMAKING  
RM-8641

This engineering report was prepared on behalf of J.E.E. Broadcasting in support of a counterproposal in RM-8641. In its rulemaking petition, Duplin Broadcasters has proposed to upgrade WBSY, now channel 284A at Rose Hill, North Carolina, to channel 284C2 and to change its city of license to Trenton, North Carolina. J.E.E. Broadcasting counterproposes that the Table of Allotments, Section 73.207(b) of the Commission's rule, be amended as follows:

**North Carolina**

<u>Present</u>		<u>Proposed</u>	
Rose Hill	Ch 284A	Rose Hill	Ch 284A
Ocracoke	Ch 225A	Ocracoke	Ch 225A, Ch 284C3

The reference coordinates for channel 284C3 at Ocracoke are as follows:

35° 06' 27" N  
75° 58' 11" W

At this site, channel 284C3 meets separation requirements to all existing and proposed stations with the exception of channel 284C2 at Trenton. An allocation study is attached as Figure 1. The reference point is within the town of Ocracoke: the facility would provide the required principal city coverage to Ocracoke.

The allotment of channel 284C3 would provide an additional service to 4,105 persons on Ocracoke, Hatteras, and the coastal areas of Carteret, Hyde and Dare Counties. The service area of the proposed channel 284C3 was computed assuming uniform terrain and reference class C3 facilities of 25 kilowatts and 100 meters above average terrain, as set forth in *Roanoke Rapids*.<sup>1</sup> The population within the 1 mV/m service area was counted using a computer program which adds the population of census tracts (1990 Census) whose centroids lie within the contour.

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<sup>1</sup> FM Table of Assignments (Roanoke Rapids and Goldboro, NC), Further Notice of Proposed Rule Making in Docket No. 17095, FCC 67-665, 32 Fed. Reg. 8530 (June 14, 1967).

Figure 2 shows the present and proposed service areas of WBSY. WBSY is now the only fulltime station licensed to Rose Hill and the only fulltime local service within Duplin County. The area within Duplin County which would lose fulltime local service is also shown in Figure 2. The 1990 population within this area is 24,136.

As Figure 3 shows, Ocracoke now receives predicted FM service from WYND-FM, channel 246C1, Hatteras and from the authorized facilities of WAHL, channel 225A, Ocracoke. A vacant channel 233C1 at Hatteras would also serve Ocracoke<sup>2</sup>. During daytime hours, Ocracoke receives service from the following AM stations:

WOBR 1530 kHz Wachese, NC  
WMBC 740 kHz Morehead, NC  
WLOS 1490 kHz New Bern, NC

No AM stations provide interference-free service to Ocracoke at night, however. The proposed channel 284C3 would therefore provide Ocracoke with a fourth fulltime aural service.

As a practical matter, only WYND-FM, Hatteras presently serves Ocracoke. There is no application pending for the vacant channel 233C1 at Hatteras. Furthermore, the authorized facilities of WAHL, Ocracoke are as yet unconstructed. The proposed channel 284C3 may offer Ocracoke the second fulltime and first local service which are actually on the air.

In contrast, all of the service area of WBSY's proposed channel 284C2 facilities receives more than five fulltime aural services.

In summary, channel 284 C3 can be allotted to Ocracoke in full compliance with the Commission's rules. This allotment would provide a second local service and a first wide-area service to Ocracoke. Channel 284C3 at Ocracoke would also provide an additional service to an area which now receives fewer than five fulltime aural services.

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<sup>2</sup> Service area computed assuming maximum facilities and uniform terrain.

Figure 1  
August 10, 1995

Title: OCRACoke Latitude: 35-06-27  
Channel 284C3 (104.7 MHz) Longitude: 75-58-11  
Database: DW 07/20/95 Safety zone: 32 km

WNBR LIC CONNER MEDIA CORPORATION 231C3 11 35-00-02 261.6 79.63 14  
ORIENTAL NC BLH-930326KA 94.1 148 76-49-58 81.1 65.63 CLEAR  
Was WZYH 11/01/92 per FCC release #193 dated 10/23/92; Ant: Elec. Res. Inc. LP  
X-4E

WFXK LIC GREAT AMERICAN EAST INC 282C1 100 36-02-22 299.3 216.0 76  
TARBORO NC BLH-900209KD 104.3 299 78-03-44 118.1 140.0 CLEAR  
Was WCAS 04/17/92 per FCC release #181 dated 04/24/92

WUOY LIC WUOY BROADCASTING CORP. 283A 4.50 34-12-35 241.7 206.9 89  
WILMINGTON NC BLH-940210KD 104.5 115 77-56-53 60.6 117.9 CLEAR  
DOC-89-326; Call Granted 11/01/91 per FCC release #170 dated 11/01/91; Ant: El  
ec. Res. Inc. FML-3-E

PRM            MOVE FROM ROSE HILL, NC    284C2            35-04-00 268.4 127.5    177  
TRENTON            NC DOC-95-88            104.7            77-22-00 87.6 -49.5 SHORT  
PRM adopted 06/08/95, released 06/19/95: RM-8641

WMSQ LIC MUSICRADIO OF NC, INC. 285A 3 34-55-24 257.3 91.21 89  
HAVELOCK NC 104.9 50 76-56-37 76.7 2.207 CLOSE  
Deletion proposed; ORDERED TO 286C2; Affiliated with WCBQ(AM)

WMSQ CP MUSICRADIO OF NC INC 285A 2.90 34-55-24 257.3 91.21 89  
HAVELOCK NC BPH-821213AG 104.9 94 76-56-37 76.7 2.207 CLOSE  
Deletion proposed; DOC-86-65; ORDERED TO 286C2

WKJE ORD MARANATHA BROADCASTING C 285C2 50 36-08-17 347.5 117.2 117  
HERTFORD NC BMPH-921001ID 104.9 89 76-15-10 167.3 .180 CLOSE  
DOC-89-326: Amended 10/20/92: ORDERED FROM 285A: TDF: Was WELQ 03/30/88

WMSQ	ORD	MUSICRADIO OF NC, INC.	286C2	34-49-43	245.4	73.89	56
HAVELOCK		NC	105.1	76-42-16	64.9	17.89	CLEAR
DOC-89-326; ORDERED FROM 285A							

WJCD LIC US RADIO OF NORFOLK FM-2 287B 50 36-48-43 346.9 194.3 71  
NORFOLK VA 105.3 152 76-27-49 166.7 123.3 CLEAR  
BRH-950601UD(23529-6/15/95); Was WMMX 03/17/95 per FCC release #250 dated 03/17/95

>> End of channel 284C3 study <<

**FIGURE 2**

**PROPOSED 1mV/m  
WSY CH 284C2  
TRENTON, NC**

**LOSS AREA  
WITHIN DUPLIN CO.**

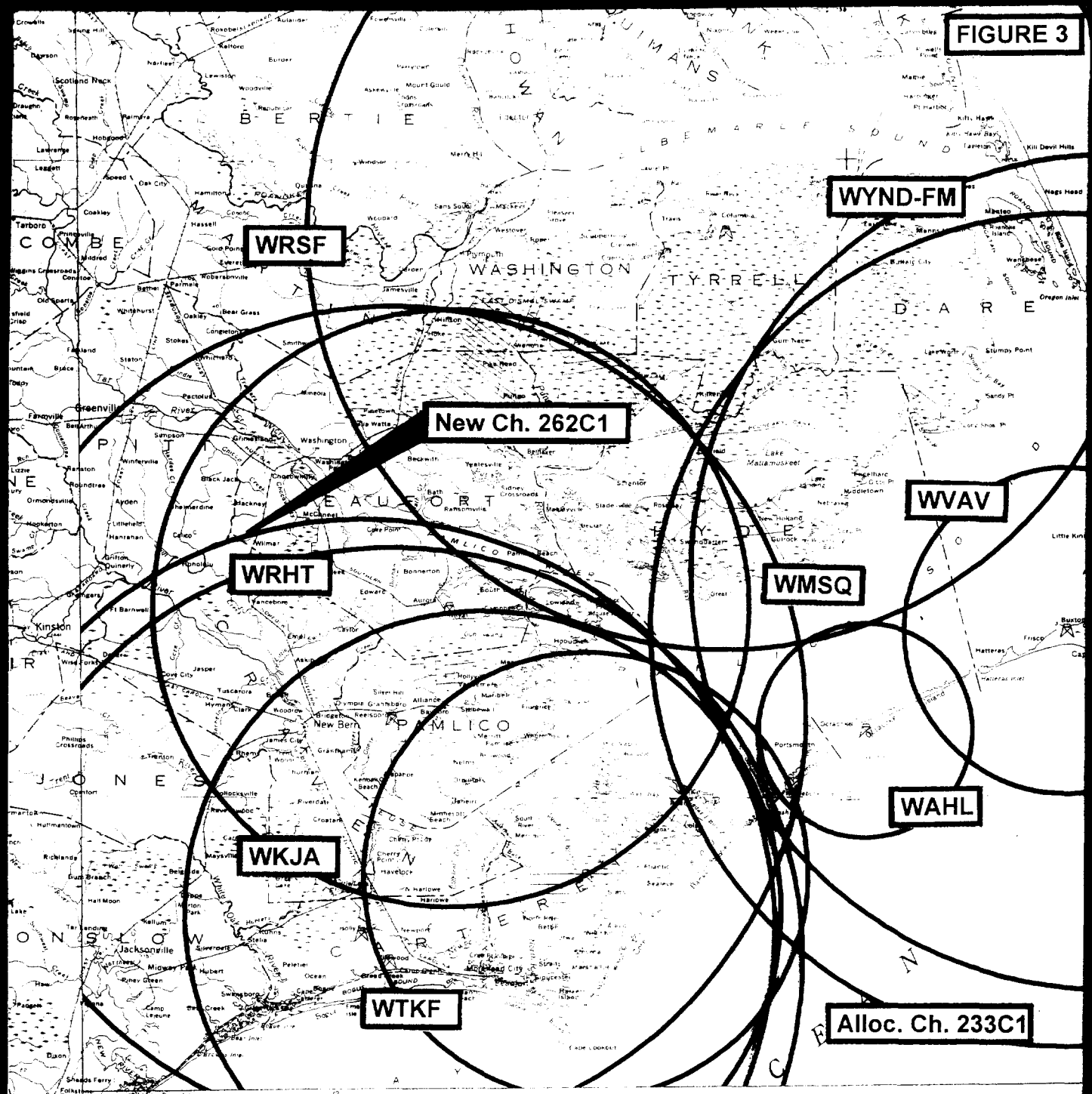
**PRESENT 1mV/m  
WSY CH 284A  
ROSE HILL, NC**

**SERVICE COMPARISON  
PRESENT AND PROPOSED WSY**

**AUGUST 1995**

**MLJ** Moffet, Larson & Johnson, Inc.  
Consulting Telecommunications Engineers

**FIGURE 3**



**FULLTIME AURAL SERVICES  
OCRACOKE, NC**

**AUGUST 1995**

**MLJ** Moffet, Larson & Johnson, Inc.  
Consulting Telecommunications Engineers

ENGINEERING REPORT

1110 N. Glebe Road, Suite 800

Arlington, VA 22201

AFFIDAVIT

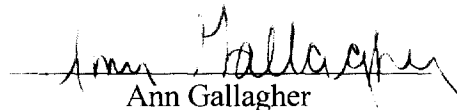
COUNTY OF FAIRFAX                    )  
  ) SS:  
COMMONWEALTH OF VIRGINIA        )

ANN GALLAGHER, being duly sworn upon oath deposes and says:


That she is employed as a Senior Engineer by the firm of Moffet, Larson & Johnson, Inc., consulting telecommunications engineers;

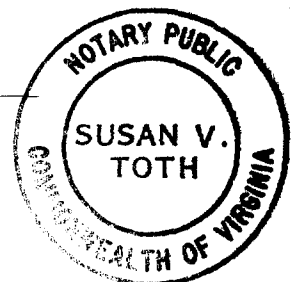
That this firm has been retained by J.E.E. Broadcasting to prepare this engineering statement;

That she has either prepared or directly supervised the preparation of all technical information contained in this engineering statement; and that the facts stated in this engineering statement are true of her knowledge, except as to such statements as are herein stated to be on information and belief, and as to such statements she believes them to be true.

  
Ann Gallagher

Subscribed and sworn to before me this 10th day of August, 1995 .

  
Notary Public



My Comm. Exps.  
July 31, 1996


July Comm. Exps.  
July 31, 1996

CERTIFICATE OF SERVICE

I, Vanessa N. Duffy, a secretary with the law firm of Irwin, Campbell & Tannenwald, P.C., hereby certify that on this 10th day of August, 1995, a copy of the foregoing "Comments and Counterproposal Of JEE Broadcasting, Inc., L.P." has been served by first-class U.S. mail, postage pre-paid, upon the following:

Peter Gutmann, Esquire  
Pepper & Corazzini  
1776 K Street, NW  
Suite 200  
Washington, DC 20006  
Counsel for Duplin County Broadcasters

William J. Pennington, III, Esq.  
5519 Rockingham Road-East  
Greensboro, NC 27407  
Counsel for RMB Broadcasting, Inc.

  
\_\_\_\_\_  
Vanessa N. Duffy